

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of  
the Invasive Species/Infested Waters  
Citation Issued to Dale Richard Burdon;  
Citation No. 177547

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge Barbara L. Neilson on August 27, 2013. Dale R. Burdon and Department of Natural Resources (DNR) Conservation Officer Anthony Bermel provided sworn testimony during the Conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on August 27, 2013.

**STATEMENT OF ISSUE**

Was Mr. Burdon properly issued a civil citation under Minn. Stat. § 84D.13, subd. (4), on May 25, 2013, for transporting his watercraft on a public road with the drain plug in place?

**SUMMARY OF CONCLUSIONS**

The Administrative Law Judge concludes that Mr. Burdon transported his boat on a public road with the drain plug in place on May 25, 2013, in violation of Minn. Stat. § 84D.10, subd. 4(b), and recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On May 25, 2013, Conservation Officer Anthony Bermel was stationed at the Hoodoo Point Landing, a Lake Vermillion public access site in St. Louis County, Minnesota. Officer Bermel observed Mr. Burdon pull into the landing towing a boat and noted that the drain plug was in place in the boat.<sup>1</sup>

---

<sup>1</sup> Testimony (Test.) of Anthony Bermel.

2. Officer Bermel issued Civil Citation No. 177547 to Mr. Burdon, which imposed a fine in the amount of \$100.00. The Citation asserted that Mr. Burdon had transported his watercraft with the drain plug in place.<sup>2</sup>

3. Mr. Burdon timely appealed the Citation.<sup>3</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.<sup>4</sup>

3. The DNR has substantiated the violation set forth in the Citation. Mr. Burdon admitted his boat was transported with its drain plug in place, as charged in the Citation.

4. The applicable statute specifies that a \$100 civil penalty may be imposed for failing to have drain plugs or similar devices removed or opened while transporting water-related equipment.<sup>5</sup>

5. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 177547 and require Mr. Burdon to pay a \$100 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

---

<sup>2</sup> Civil Citation No. 177547; Test. of A. Bermel.

<sup>3</sup> See handwritten appeal letter from Dale Burdon dated June 7, 2013 (attached to the DNR's letter dated June 25, 2013, referring this matter to the Office of Administrative Hearings).

<sup>4</sup> See Minn. Stat. § 84D.13, subd. 4(4).

<sup>5</sup> Minn. Stat. § 84D.13, subd. 5(a)(6).

## RECOMMENDATION

**IT IS RECOMMENDED** that the Commissioner of Natural Resources **AFFIRM** Invasive Species Civil Citation No. 177547 issued to Dale R. Burdon on May 25, 2013.

Dated: October 22, 2013

s/Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

## NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Dale R. Burdon. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

## MEMORANDUM

During the telephone conference call, Mr. Burdon stated that his boat had been dry-docked since the fall of 2012. He asserted that he had not used the boat prior to June 10, 2013, and it was completely dry at the time the citation was given. He indicated that he usually transported his boat with the drain plug out, but had put the plug in place that morning so he would not forget to do that when he arrived at the access. Although he acknowledged that it was wrong to do so, he argued that the Conservation Officer was picking and choosing who would get a ticket. He asserted that the Officer had merely given a warning for the same infraction to a local resident who had just launched a small aluminum boat, and contended that the Officer seemed to be unfairly targeting “out-of-towners” and those with bigger boats. In Mr. Burdon’s view, the Officer should have merely given him a warning for violating what he considered to be a new requirement.<sup>6</sup>

In response, Officer Bermel agreed that there was not any water in the live well of Mr. Burdon’s boat. However, he emphasized that enforcement of the drain plug requirement is a priority of the DNR and stated that he gave Mr. Burdon a break by issuing a civil citation rather than a criminal citation. Officer Bermel could not remember

---

<sup>6</sup> Test. of Dale Burdon.

what decision he made with respect to the boat that was launched just prior to Mr. Burdon's boat or what the circumstances were. He recalled that he may have given a warning to two juveniles who transported their boat directly from the nearby campground and were only on a public road for a very brief period of time; however, Mr. Burdon contended that the individuals to whom he was referring were adults who had a truck and were launching their boat. In any event, Officer Bermel stated that he wrote several citations that day to individuals who had transported boats with their drain plugs in place. He also pointed out that the law that was violated has been in place for some time.<sup>7</sup>

The Minnesota law requiring the removal or opening of drain plugs during transportation of a boat on roadways has been in effect since August 1, 2010.<sup>8</sup> The statute sets forth a broad requirement and does not include any exception for boats that are just coming out of dry dock. Mr. Burdon does not contest that his boat had its drain plug in place as it was transported on the public roads to the Hoodoo Point Landing access. Conservation Officers are given the discretion to issue citations for violations, and Officer Bermel also issued citations to boaters other than Mr. Burdon on the day in question. Under all of the circumstances, it is appropriate to recommend that Citation No. 177547 be affirmed.

**B. L. N.**

---

<sup>7</sup> Test. of A. Bermel.

<sup>8</sup> See 2010 Minn. Laws, ch. 361, art 4, sec. 25.